



POLICE DEPARTMENT

September 30, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Latisha Keirse
Tax Registry No. 940312
6 Precinct
Disciplinary Case No. 2010-1302

The above-named member of the Department appeared before me on April 22, 2013 and June 6, 2013, charged with the following:

1. Said Police Officer Latisha Keirse, assigned to the 6th Precinct, on or about March 7, 2009, while off-duty, and present at the scene of a domestic incident involving persons known to the Department, wrongfully failed to identify herself as a Uniformed Member of Service to 911 and to request the response of a patrol supervisor, precinct of occurrence [*sic*], to the scene of said incident.

P.G. 212-32, Page 1, Paragraph 2 – OFF DUTY INCIDENTS INVOLVING
UMOS

P.G. 208-37, Page 4 FAMILY OFFENSES AND DOMESTIC VIOLENCE
INVOLVING UNIFORMED OR CIVILIAN MEMBERS
OF SERVICE

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Respondent had been dating Person A for three months when on March 7, 2009 he proposed to her and she agreed to marry him. They then went to [REDACTED], the home of Person A's grandmother, where he was then living. Person A's mother Person B was there. Because of Person B's actions, Respondent called 911 and requested that uniformed members of the service (UMOS) respond to the house.

The Department's Case

The Department called Lieutenants Daniel Cutter and Alexander Adeshchenko, and Police Officers Alicja Szabranska and Ivelisse Negron as witnesses.

Lieutenant Daniel Cutter

Cutter, who was appointed as a UMOS in 2003 and was promoted to lieutenant in 2012, recalled that he was assigned to Internal Affairs Bureau (IAB) Group 12 from April 2009 until April 2010, when he held the rank of sergeant.

Cutter testified that the investigation that led to the subject charge was begun after Person B made a complaint to IAB about Respondent. Cutter and Sergeant Sion conducted a tape-recorded interview of Person B at her home on June 4, 2009.¹ Person B alleged that Respondent was present during a domestic dispute which took place between

¹ Although the Department initially offered the tape recording of Person A's interview into evidence, the Assistant Department Advocate withdrew it from evidence because Person A made other allegations against Respondent that IAB unsubstantiated when Person B recanted them during a subsequent interview.

Person B and Person A on March 7, 2009, and that uniformed police officers had responded to this dispute.

On cross examination, Cutter confirmed that his only involvement in the investigation of Respondent was his participation in the June 4, 2009 interview of Person B. He did not recall interviewing any other witnesses and he was not present when Person B was subsequently reinterviewed regarding her allegations.

Lieutenant Alexander Adeshchenko

Adeshchenko, who was appointed as a UMOS in 1995 and was promoted to lieutenant in 2005, testified that he has been assigned to IAB Group 12 since October 2009 as an investigative team leader and that he supervised Sion who was assigned to investigate the allegations Person B made against Respondent. Adeshchenko testified that Sion is presently on long-term sick leave.

Adeshchenko recalled that the investigation of Respondent was already underway when he joined IAB Group 12. After reviewing his investigative findings report, Adeshchenko recalled that Person B had alleged that during an altercation between herself and her son Person A at her house on March 7, 2009, Respondent had turned away and took no action when Person A began choking Person B. Person B also alleged that the uniformed police officers who responded to the incident did not prepare any report. Adeshchenko recalled that Person B's allegation that Respondent had taken no action when Person A allegedly choked Person B on March 7, 2009, was unsubstantiated as were other allegations that Person B made against Respondent.

Adeshchenko testified that a review of the SPRINT report from March 7, 2009, which resulted in uniformed police officers responding to the incident, revealed the cell phone number of the female who had called 911 from her AT&T cell phone to report the incident. IAB then obtained AT&T billing records which showed that the 911 call had been made from Respondent's cell phone. Adeshchenko further testified that the SPRINT report showed that Respondent had not identified herself as a member of the Department to the 911 operator, that she remained anonymous throughout the call, and that she did not request that a patrol supervisor respond to the scene.

Adeshchenko confirmed that the tape recording of Respondent's 911 call had been destroyed because too much time had passed between the 911 call and the initiation of the investigation. Adeshchenko did not interview Respondent, Person B or Person A.

Adeshchenko testified that based on his experience it was his belief that the Patrol Guide requires UMOS to call 911 and identify themselves as UMOS when they are present at incidents such as domestic disputes and that once the UMOS is no longer in any personal danger, the UMOS is required to request that a patrol supervisor respond to the scene. Adeshchenko further asserted that a UMOS must follow this procedure when a UMOS is directly involved in the dispute or is merely a witness to the dispute.

On cross-examination, Adeshchenko agreed that there were some situations where off-duty UMOS are not required to identify themselves as UMOS to a 911 operator. When asked to give an example, Adeshchenko answered, "When you're not personally involved." Adeshchenko agreed that if an off-duty UMOS looked out a window at his home and saw "a bunch of kids getting ready to fight" on the street, if that UMOS called 911, he would not have to identify himself as a UMOS to the 911 operator.

Adeshchenko confirmed that he did not personally interview either Respondent or Person B but that he was aware that Person B's account including choking while Respondent asserted that the incident involved only a verbal argument that needed to be defused before it got out of hand. Adeshchenko agreed that a person does not need to wait until a crime has been committed to call 911.

Adeshchenko testified that he interviewed the officers who had responded to Respondent's 911 call. Adeshchenko confirmed that the responding officers had no independent recollection of the event since the interview took place about a year after the event and because they had responded to several other calls that night. Adeshchenko agreed that if Person B had told the responding officers that she had been choked by Person A, her allegation would have resulted in an "arrest situation." Adeshchenko confirmed that there were no arrests made at the scene of the incident and that the responding officers were not found to have committed any misconduct regarding the manner in which they handled the situation. Adeshchenko recalled that the responding officers completed a Domestic Incident Report (DIR), that they marked it "refused" and that they then resumed patrol.

Adeshchenko clarified that UMOS who call 911 have to identify themselves if they are a witness or participant in a domestic dispute. Although Adeshchenko agreed that a heated argument is not a domestic dispute so long as a participant is not making threats or damaging property, when a UMOS feels that a 911 call is warranted, even if the incident is merely a dispute, the UMOS must identify herself to the 911 operator.

Adeshchenko learned through his investigation that Person B preferred Person C, Person

Als ex-girlfriend, over Respondent as a romantic partner for Person A.

Adeshchenko agreed that Person B was very upset to learn that her son had decided to marry Respondent.

Adeshchenko confirmed that Respondent had admitted that she was the person who called 911 on March 7, 2009. Respondent also told Adeshchenko that she had hidden the fact that she called 911 from Person B in order to prevent Person B from overreacting and that she had whispered to the 911 operator so that Person B would not hear what she was saying to the operator.

Police Officer Alicja Szabraska

Szabraska, a UMOS since 2005 who has been assigned to the 105 Precinct for six years performing patrol duties, testified that on March 7, 2009, she worked a 3:00 p.m. to 11:35 p.m. tour partnered with Police Officer Negron. Szabraska testified that she has no present recollection that she and Negron responded to a domestic dispute call during their tour of duty on March 7, 2009, but that her Activity Log entries for that tour of duty indicate that they responded to a "dispute among family" at 112-03 212th Street, Queens. Although Szabraska did not have any independent recollection regarding the details of the dispute, she asserted that she is certain that no patrol supervisor arrived at the scene and that she did not call for one. Szabraska testified that she would have called for a patrol supervisor if she had been informed that a UMOS was involved in the dispute. Szabraska further testified that her partner prepared a report about the incident.

On cross-examination, Szabraska agreed that there are other situations when she would call a sergeant to the scene besides when a UMOS was involved in a family dispute. Szabraska agreed that her Activity Log entry did not contain any descriptions

of what she saw or heard regarding the incident on March 7, 2009. She also agreed that at her official Department interview she did not recognize the faces in the photos she was shown. Szabranska recalled that she and Negrón were at the scene of the dispute for no more than five minutes.

Police Officer Ivelisse Negrón

Negrón, who has been a UMOS since 2006 and has been assigned to the 105 Precinct for eight years, testified that on March 7, 2009, she and Szabranska received more than one radio call regarding family disputes and that they responded to one call which involved a dispute at a house on 212th Street, Queens. Negrón could not recall whether the radio call for that dispute contained any other information besides the address. Negrón recalled that they responded to the address, but she could not recall how long it took. She did not recall seeing any other UMOS or any patrol supervisor at the location. Negrón testified that neither she nor her partner called a patrol supervisor to the scene. Negrón testified that she completed a DIR but that she marked it “refused” which means that the participants in the dispute either “didn’t want to talk to” the officers or did not want a report. Negrón testified that in her experience if a radio call involved another UMOS she would “have to direct that” call “automatically to a supervisor on patrol.”

On cross-examination, Negrón agreed that if a radio call included the information that an off-duty UMOS was involved in an incident, a patrol supervisor would respond automatically. Negrón confirmed that she had no independent recollection of the incident on March 7, 2009.

On redirect examination, Negron confirmed that her Activity Log entry contained nothing to indicate that a patrol supervisor had responded to the scene and that if a patrol supervisor had responded to the scene, she would have written that in her Activity Log entry.

Respondent's Case

Respondent testified in her own behalf.

Respondent

Respondent, a seven-year UMOS who has been assigned to patrol duties at the 6 Precinct for the past six years and was previously assigned to Midtown South, testified that on March 7, 2009, after Person A had proposed to her, they went to Person A's grandmother's house in Queens so that he could pick up clothing to wear at a christening the next day.

When they arrived at Person A's grandmother's house, Person B was there. Person A told Person B "Look ma. I'm engaged!" Person A then held out Respondent's hand to show Person B the engagement ring but Person B did not appear "too happy about it." Respondent did not know why Person B did not want Person A to marry her since they had not had any problems previously.

Respondent and Person A then went upstairs to Person A's second floor bedroom so that he could get his clothes. They closed the door to the room. As they were looking for a suit in Person A's closet, Person B started "really banging" hard on the door to Person A's bedroom. Person A opened the door because he did not want Person B "to break it down."

Person B then “stormed in the room.” She appeared “really upset.” Person B started yelling and Person A tried to calm her down. Respondent could not recall what Person B was yelling. Person A had told Respondent that Person B was “bipolar” and that she had not been taking her medication.

Respondent decided to call 911 “before this turned into something.” Respondent explained that she called 911 because she did not “know what a bipolar person is capable of doing,” because she “didn’t want any problems,” and because she was concerned that the incident might get to a point of “no return,” although up to that point there had also been no physical contact between Person A and Person B nor any threats of bodily harm. Respondent did not view the verbal exchange between Person A and Person B as an argument because Person B was doing all the yelling and Person A was not “arguing back.”

When Respondent called 911 on her cell phone, she tried to hide this from Person B because she did not want Person B to see that she was on the phone and then “go nuts.” Respondent confirmed that Person B was directing all of her attention towards Person A. Person B and Person A were about ten feet away from her. Respondent told the 911 operator the address and to “please get the cops over here.” She tried to let the operator “hear what was going on.” Respondent did not remember if she had identified herself as a UMOS to the 911 operator because she was “just trying to get the address out.”

Respondent recalled that when officers arrived, Person A and Person B went downstairs to speak with them. Respondent followed them downstairs shortly after and found them already speaking with two officers in the living room. One officer was

talking to Person A and the other officer was talking to Person B. Respondent tried to "signal to one of the cops" to "let them know what happened" and who she was. Respondent did not want to interrupt them so she walked past them and out the front door to where Person A's grandmother was standing outside.

Shortly thereafter, Respondent leaned her head around the front door to try to signal to the officers inside but Person B saw Respondent. Person B told her that "this doesn't concern you" and then slammed the door closed in her face.

After five to ten minutes, the officers came outside and Respondent told Negrón that she was "on the job." When Negrón asked to see her Department ID, Respondent showed Negrón her Department ID card. Negrón asked her if she had a place to stay that night and whether Person A could stay there with her. Respondent told Negrón that they had only come to the house to get clothing and that Person A was going to stay with her at her apartment. Respondent and Person A then left.

Respondent did not request that a sergeant respond to the scene since she did not think that a sergeant was needed because she "literally was not involved" in the dispute. She only called 911 "just to make sure nothing happened." Once the officers arrived, Person B stopped yelling and the incident ended. Respondent has not seen Person B since March 7, 2009.

On cross-examination, Respondent estimated that she and Person A had been inside his bedroom for no more than five minutes before Person B started to bang on the door. Respondent could not recall how many times Person B had banged on the bedroom door, but it was "more than once." Respondent denied that Person B had thrown items

around the room, but she agreed that Person B might have “knocked something off the dresser.” Respondent could not recall what the item was or if it broke.

When Respondent was confronted with a statement she made at her official Department interview that Person B was “destroying the room,” she testified that she had no present recollection of having specifically said that. Respondent agreed that she told her interviewers that Person B would have broken the door down if Person A had not opened it and that she thought that Person B was an Emotionally Disturbed Person because “she came out of nowhere yelling and screaming” which “wasn’t normal.”

Respondent estimated that Person B had been yelling for three to five minutes before Respondent called 911 and that Person B was still screaming while she was on the phone with the 911 operator. Respondent tried to let the 911 operator “hear what was going on” rather than trying to explain what Person B was doing which would have alerted Person B that Respondent was calling the police. Respondent denied that she had been afraid of Person B. Respondent did not know what medications Person B was taking. She had not seen Person B act in this manner before March 7, 2009.

Respondent would have left the room to make the 911 call but Person B was standing in front of the door. Respondent did not try to walk around Person B because she did not want to get involved in the argument or let Person B see that she was calling the police. Respondent “just didn’t want to upset her any more” than she already was. She went downstairs immediately after Person A and Person B went downstairs to the living room where the police officers were. When Person B slammed the front door on Respondent, she was left standing outside the door on the stoop.

FINDINGS AND ANALYSIS

It is charged that on March 7, 2009 while Respondent was off-duty and present at the scene of a domestic incident involving Person B and Person A, Respondent failed to identify herself as a UMOS to the operator when she called 911 and she failed to request the response of the patrol supervisor in the precinct of occurrence to the scene of the incident.

The allegation that Respondent failed to identify herself as a UMOS to the 911 operator raises two issues: Was Respondent under a duty to tell the 911 operator that she is a UMOS and, if so, did the Department prove that she failed to do so.

With regard to the first issue, Adeshchenko conceded that in a situation where an off-duty UMOS who has called 911 is merely a disinterested onlooker regarding an incident that the UMOS is not personally involved in, the off-duty UMOS would not be under a duty to identify herself as a UMOS to the 911 operator. However, that is not the case here. Respondent acknowledged that she was with Person A in his room when Person B began pounding on the door so violently that Person A opened the door so that Person B would not break it down and that an extremely upset Person B (who Respondent knew was bipolar and had not been taking her medication) then stormed into the room screaming at Person A. Respondent further acknowledged that Person B then became physical by knocking items off of the top of Person A's dresser and, as Respondent described it at her official Department interview, by "destroying the room."

Respondent's admissions that she did not attempt to leave the room because she did not want to try to walk past Person B, who was blocking the doorway; and that she attempted to hide from Person B that she was calling 911 because she believed that

Person B was an Emotionally Disturbed Person; because she was concerned that the incident might get to a point of “no return;” and because she did not “know what a bipolar person is capable of doing;” betrays her personal concern as to what Person B might do. I credit Respondent’s claim that she called 911 and requested that officers respond to the scene because she did not want the situation to escalate, but at the point when she called 911, Respondent could not be certain that Person B would not escalate the situation before officers arrived at the house and that she herself might have to take police action.

Based on the above, I find that under the circumstances presented here Respondent was under a duty to identify herself as a UMOS to the 911 operator.

With regard to the second issue, the testimony of Adeshchenko, Szabranska and Negron sufficiently proves that Respondent did not identify herself as a UMOS to the 911 operator. Adeshchenko recalled that the SPRINT report which was generated as a result of Respondent’s call to 911 showed that the caller did not identify herself by name or as being a UMOS. Szabranska and Negron confirmed that the transmission that they received from the dispatcher did not include the fact that the caller was a UMOS and that had they been so informed they would have followed proper procedure and requested that the patrol supervisor meet them at the location.

Finally, with regard to the allegation that Respondent failed to request the response of the patrol supervisor in the precinct of occurrence to the scene of the incident, the charge cites to two Patrol Guide Procedures: Patrol Guide Procedure 212-32, “OFF DUTY INCIDENTS INVOLVING UMOS;” and Patrol Guide Procedure 208-37,

“FAMILY OFFENSES AND DOMESTIC VIOLENCE INVOLVING UNIFORMED OR CIVILIAN MEMBERS OF SERVICE.”

Patrol Guide Procedure 212-32 mandates that “(w)hen an off duty uniformed member of the service is at an unusual police occurrence to which the uniformed member of the service is either a participant or a witness” the uniformed member of the service must “request response of patrol supervisor, precinct of occurrence.” This Procedure further states that “*(f)or purposes of this procedure an unusual police occurrence shall include family disputes and other incidents of domestic violence in which the officer is either a participant or a witness.*”

Patrol Guide Procedure 208-37 similarly states that “*(a)n off-duty uniformed member of the service*” who is “*present at an unusual police occurrence (including family disputes and other incidents of domestic violence) in which the officer is either a participant or a witness is required to... request the response of the patrol supervisor.*”

Thus, the unambiguous language contained in these two separate Patrol Guide Procedures² placed Respondent on clear notice that even if she considered herself to be no more than a witness to this family dispute, she was required to affirmatively request that the patrol supervisor of the precinct of occurrence respond to the scene of this family dispute.

The above-cited testimony of Adeshchenko, Szabranska and Negron sufficiently proves that Respondent did not request that a patrol supervisor respond to the scene.

Respondent is found Guilty.

² Although new versions of these two Patrol Guide Procedures were issued on Aug. 1, 2013, the cited language has not been changed and has been continuously in effect since these two Patrol Guide Procedures were initially issued on Jan. 1, 2000.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate (the Advocate) recommended that the penalty to be imposed on Respondent consist of the forfeiture of ten vacation days. The Advocate did not cite any prior decisions to support this penalty recommendation.

In Case No. 2007-83389 (Aug. 13, 2008), an 11-year officer with no prior disciplinary record who was involved in an off-duty road rage incident forfeited ten vacation days after he pleaded guilty to failing to identify himself as an officer to a 911 operator and failing to notify the desk officer precinct of occurrence. The officer also pleaded guilty to pointing his firearm at the other motorist and failing to remain at the scene.

Also, in Case No. 2010-3022 (May 8, 2012), a 19-year officer who had a prior disciplinary adjudication forfeited ten vacation days after she pleaded guilty to failing to identify herself as a UMOS to a 911 operator and failing to request that the patrol supervisor of the precinct of occurrence respond to the scene of a domestic incident she was involved in. She also pleaded guilty to failing to identify herself as a UMOS to the responding officers.

More recently, in Case No. 2010-2087 (Jan. 7, 2013), a six-year officer with no prior disciplinary record forfeited 15 vacation days after he pleaded guilty to failing to

notify the patrol supervisor after he was involved in an unusual police occurrence while off-duty. The officer also pleaded guilty to engaging in a physical altercation with civilians and failing to remain at the scene of the altercation.

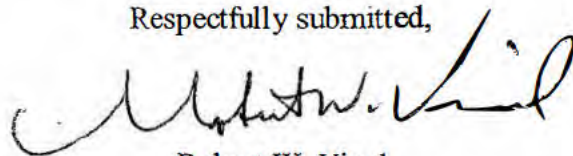
Most recently, in Case No. 2012-7093 (Sept. 3, 2013), a 19 year officer with no prior formal disciplinary record forfeited five vacation days after he was found guilty of failing to notify the Operations Unit that he had been involved in an unusual police occurrence which took place outside New York City. In that case, the off-duty officer engaged in a loud, prolonged argument with a beach manager which resulted in a police response and report which the officer failed to disclose to the Department.

Unlike the cases cited above, Respondent here was a witness to, not a participant in, a verbal altercation. Also, she is not alleged to have failed to identify herself as a UMOS to the responding officers or to have failed to remain at the scene.

Moreover, Respondent has no prior formal disciplinary record, this brief, minor incident took place four and a half years ago, and Respondent has not been the subject of any subsequent disciplinary action.

Therefore, it is recommended that Respondent receive a Reprimand as a penalty in this matter.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED
OCT 07 2013

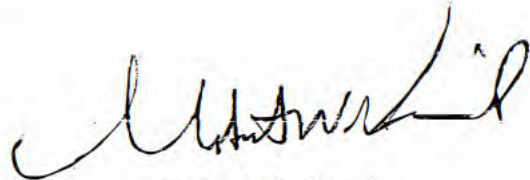
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LATISHA KEIRSEY
TAX REGISTRY NO. 940312
DISCIPLINARY CASE NO. 2010-1302

Respondent received an overall rating of 3.0 on her 2012 performance evaluation, 3.0 on her 2011 evaluation, and 3.0 on her 2010 evaluation. She has no medals. [REDACTED]
[REDACTED]. She has no monitoring records. She has no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials